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FILE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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APR 21 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Rules Governing)
Procedures to Be Followed)
When Formal Complaints Are)
Filed Against Common Carriers)

CC Docket No. 92-26

TO: The Commission

COMMENTS
OF
WILLIAMS TELECOMMUNICATIONS GROUP, INC.

April 20, 1992

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Its Attorneys

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WILLIAMS TELECOMMUNICATIONS GROUP, INC.

Williams Telecommunications Group, Inc. ("WilTel"), on behalf of its common carrier operating subsidiaries, has prepared the following comments to assist the Commission in its goal of facilitating timelier resolution of formal complaints. The changes proposed in the Notice of Proposed Rulemaking should reduce the unintended and unfortunate delays which currently exist in resolving complaints.

THE COMMISSION'S PROPOSALS

WilTel supports the Commission's proposed changes to pleading procedures which would reduce the period for filing

an answer, limit a party's opportunity to file replies, and require answers to be filed concurrently with a motion to make a complaint more definite.

The proposed bifurcation of complaint proceedings, which would delay discovery of facts involving damages until liability has been established, should substantially expedite the formal complaint process while conserving the resources of both the Commission and parties. For parties that must litigate the issue of damages, a period set aside for settlement negotiations may prove useful in further conserving the resources of the Commission and parties.

WilTel strongly agrees with the Commission's belief that the benefits of limited self-executing discovery through interrogatories should be preserved. Presently, a party may serve interrogatories without prior Commission approval; other forms of discovery require such approval.¹ Through this process, the parties normally can compile an adequate record for the resolution of the complaint. In addition, the right to submit interrogatories without specific approval avoids entangling the Commission staff in nonsubstantive disputes concerning the scope of discovery. Consequently, WilTel strongly opposes a rule precluding all discovery, including interrogatories, absent an affirmative order by Commission staff.

¹47 C.F.R. § 1.730 (1991).

REQUESTS FOR ADMISSION

The Commission has asked commenters to submit alternative discovery proposals designed to expedite the prompt resolution of formal complaint proceedings.² The Commission should consider expanding the limited self-executing discovery to include requests for admission in addition to interrogatories. While often less burdensome than interrogatories, this form of discovery can be very effective in limiting the scope of disputed facts.

Although the Commission does not wish to model the formal complaint rules upon the Federal Rules of Civil Procedure, it has recognized that the federal judiciary's rules can provide useful guidance.³ Rule 36 of the Federal Rules of Civil Procedure allows a party to request an admission from the opposing party as to the truth of any relevant matters not privileged, including the genuineness of documents.⁴

²See Notice of Proposed Rulemaking, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 92-26, at 6-7 n.9 (released Mar. 12, 1992).

³Id. at 4 n.3.

⁴Fed. R. Civ. P. 36(a) provides:

Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact including the genuineness of any documents described in the request

By allowing parties to file requests for admission as of right without prior Commission consent, the proceedings could focus only on those facts truly at issue. Through this procedure, parties could also more easily establish the genuineness of documents which would further facilitate the formal complaint process.

ATTORNEYS' FEES

Although not addressed by the Commission in the Notice of Proposed Rulemaking, WilTel requests that the Commission consider awarding attorneys' fees to successful complainants where the Commission deems it appropriate. Section 206 of the Communications Act expressly gives federal courts authority to award attorneys' fees to persons damaged by a common carrier's violations of the Communications Act.⁵ Section 207 provides that any damages for which a common carrier may be liable under the Act may be recovered either through the complaint

⁵Section 206 of the Communications Act, 47 U.S.C. § 206 (1991), provides:

In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

process or by filing suit in federal district court.⁶ Thus, attorneys' fees can be recovered either in a judicial or complaint proceeding.⁷ Expanded use of Section 206 would expedite resolution of formal complaint proceedings. The risk of being ordered to pay another party's counsel fees would have the effect of encouraging parties to avoid using delaying tactics in the complaint process.⁸

CONCLUSION

The Commission's proposed changes to the formal complaint procedures will facilitate the timely resolution of formal complaint proceedings.

⁶47 U.S.C. § 207 (1991).

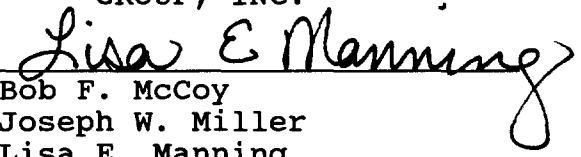
⁷A contrary interpretation encourages those with meritorious claims to file a lawsuit rather than a complaint. Because of the primary jurisdiction principle, most of these claims would consume both Commission and judicial resources. WilTel recognizes that the Commission has stated it has no authority to award attorneys' fees. While that conclusion may be accurate in many cases, in the formal complaint context it would alter the outcome of a dispute based on the forum selected. The Commission should give full effect to the congressional intent, as expressed in Section 207, to allow those injured by violations of the Act to pursue regulatory or judicial remedies. If the Commission believes it cannot award attorneys' fees, it should request an appropriate revision to the Communications Act from Congress.

⁸The award of attorneys' fees would be a powerful weapon when combined with the right to issue requests for admission. A party denying a request for admission in bad faith should be obligated to bear the other party's costs of establishing the disputed facts. This will, to a great extent, occur automatically when the losing party has engaged in bad faith denials (because the opposing party's attorneys' fees will reflect the added burden imposed). When the prevailing party is guilty of such bad faith, its award of attorneys' fees should be reduced accordingly.

WHEREFORE, WilTel supports the Commission's proposed changes.

April 20, 1992

WILLIAMS TELECOMMUNICATIONS
GROUP, INC.


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CERTIFICATE OF SERVICE

I, Pamela S. Neff, hereby certify that on April 21, 1992, a copy of the foregoing **Comments of Williams Telecommunications Group, Inc.** was sent by first class mail, postage prepaid, to the following:

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